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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.R. No.43 of 1990
Date of decision: 1.2.2007

The Commissioner of Income-tax, Patiala ...Petitioner

Versus

M/S Ashoka Steel Industries & Flour Mills, Gobindgarh

...Respondent

CORAM: HON'BLE MR.JUSTICE M.M.KUMAR
HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr.Yogesh Putney, Advocate for the Revenue.

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RAJESH BINDAL, J.

The Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for short , 'the Tribunal) has referred under Section 256(1) of the Income Tax Act, 1961 the following question of law which emerges from its order dated 22.8.1988 in ITA No.924/Chandi/84 for the assessment year 1980-81:-

> "Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in upholding the order of the CIT(A) with regard to the holding that the provisions of section 40A (3) were not applicable to the said addition of Rs.35,800/-.

Facts as noticed by the Tribunal in the statement of case are that assessee has claimed expenditure of Rs.35,800/- on account of purchase made in cash, which were disallowed by the Assessing Officer under Section 40A(3) of the Income Tax Act, 1961 (for short 'the Act') as the Assessing Officer was not satisfied with the reasons given by the assessee for non compliance of provisions of Section 40A (3) of the Act. In appeal the assessee succeeded in persuading the Commissioner of Income-Tax (A) (for short 'the CIT(A)'), to accept its explanation furnished. The order of the CIT(A) was upheld by the Tribunal in further appeal by the

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Revenue.

We have heard Mr.Yogesh Putney, learned counsel for the Revenue and with his assistance have perused the paper book.

Mr.Putney has vehemently argued that the findings recorded by the CIT(A) as confirmed by the Tribunal are perverse in so far explanation furnished by the assessee for explaining the cash payment was not sufficient and acceptable. He further submitted that there being clear violation of provisions of Section 40A (3) of the Act, the assessee was not entitled to deduction of the amount so spent by him.

On a perusal of the order passed by the Tribunal, we find that the clear finding has been recorded that the assessee purchased coal from truck owners, who supplied the same at their factory premises on F.O.R. cash basis. It has been concluded that the assessee use to pay to the truck owners in cash for the goods as truck owners generally did not have any bank accounts and that the amount was paid after banking hours because coal had been in very short supply those days. It was under such special circumstance that the assessee had to make payment in cash. The genuineness of the transactions was not in dispute. Referring to Rule 6DD of the Income Tax Rules, 1961, which relaxes the rigours of Section 40A (3) of the Act, the Tribunal accepted the explanation submitted by the Assessee. Even if there is a second opinion possible on re-appreciation of fact as found and accepted by CIT(A) and the Tribunal, this court would not substitute its own opinion simply for the reason that the other view is also a possible view.

Accordingly, the question referred is answered against the Revenue and in favour of the assessee.

Reference is disposed of accordingly.

(Rajesh Bindal)
Judge

February 01, 2007 **(M.M.Kumar)**
Pka **Judge**

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